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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FELICIA VIDRIO and PAUL BRADLEY, individually, and on behalf of all others similarly situated, Plaintiff(s), vs. UNITED AIRLINES INC., and DOES 1 through 50, inclusive, Defendant(s).	Case No.: 2:15-cv-7985-PSG-MRW **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION** Date: March 20, 2017 Time: 1:30 p.m. Location: Courtroom 6A 350 W. 1st Street Los Angeles, CA 90012 District Judge: Hon. Phillip S. Gutierrez

NOTICE OF MOTION AND MOTION

TO DEFENDANT AND ITS ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED THAT on March 20, 2017, at 1:30 p.m., or as soon thereafter as the matter may be heard in Courtroom 6A of the above-entitled Court, located at 350 W. 1st Street, Los Angeles, CA 90012, Plaintiffs, on behalf of the Class Members, the State of California, and the Aggrieved Employees, will and hereby do seek an Order granting summary judgment, or in the alternative, partial summary judgment, pursuant to F.R.C.P. § 56(a), as to the following causes of action in the Amended Consolidated Complaint on the issue of liability:

1. First Cause of Action – The State and Aggrieved Employees seek a finding on the issue of Defendant's liability under the Labor Code Private Attorney General Act ("PAGA") based upon Defendant's violation of Labor Code § 226(a)(8), to wit, Defendant's failure to list Defendant's address on the wage statements;

2. First Cause of Action – The State and Aggrieved Employees seek a finding on the issue of Defendant's liability under PAGA based upon Defendant's violation of Labor Code § 226(a)(9), to wit, Defendant's failure to list the hours worked by the flight attendants and applicable hourly rates on the wage statements;

3. Second Cause of Action – The Class Members seek a finding on the issue of Defendant's liability under the class action claim based upon Defendant's violation of Labor Code § 226(a)(8), to wit, Defendant's failure to list Defendant's address on the wage statements;

4. Second Cause of Action – The Class Members seek a finding on the issue of Defendant's liability under the class action claim based upon Defendant's violation of Labor Code § 226(a)(9), to wit, Defendant's failure to list the hours worked by the flight attendants and applicable hourly rates on the wage statements; and

5. Second Cause of Action – Pursuant to Labor Code § 226(h), the Class Members seek injunctive relief in the form of an Order requiring Defendant to comply with subdivisions (a)(8) and (a)(9) of § 226, to wit, list the physical address of Defendant

on the wage statements and list the hours worked by the flight attendants and applicable hourly rates on the wage statements;

This Motion is based upon this Notice, the Memorandum of Points and Authorities in support thereof, the accompanying Declaration of Kirk D. Hanson, Esq., the exhibits attached thereto, the files and records of the Court, and on such oral and documentary evidence as may be presented at the hearing on this Motion.

This motion is made following the conference of counsel pursuant to L. R. 7-3 which took place on January 13, 2017.

Dated: January 19, 2017

JACKSON HANSON LLP

By: [signature]
Kirk D. Hanson, Esq.
Attorneys for Plaintiffs, the Aggrieved Employees, and the Class Members

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Labor Code § 226(a) mandates that wage statements issued to California residents, who are paid and employed in California, list the address of the legal entity that is the employer and list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Lab. C. § 226, subds. (a)(8), (a)(9). These straight-forward wage statement requirements have been illustrated for years by the California Division of Labor standards Enforcement ("DLSE") by way of an exemplar paystub the DLSE posts for public viewing on its website. The DLSE exemplar paystub shows compliance with § 226(a)(8) by listing the employer's physical address and shows compliance with § 226(a)(9) by listing the applicable hourly rates and the number of hours worked by the employee at each rate. (See exemplar paystubs, attached as Exhibits B, C and D to Hanson Decl.).

The State of California, the Aggrieved Employees and the Class Members are entitled to summary judgment on the First and Second Causes of Action on the issue of liability on the § 226(a)(8) claim because it is undisputed that Defendant United Airlines, Inc. ("Defendant") fails to list its physical address on the subject wage statements. The State, the Aggrieved Employees and the Class Members are also entitled to summary judgment on the issue of liability on the First and Second Causes of Action on the § 226(a)(9) claim because it is undisputed that Defendant fails to list the flight attendants' applicable hourly rates and number of hours worked at each rate on the subject wage statements. The Class Members are likewise entitled to injunctive relief under § 226(h) to cure these violations and ensure compliance with subdivisions (a)(8) and (a)(9).

The Labor Code § 226 wage statement claim is particularly suited for disposition by way of summary judgment. See *McKenzie v. Federal Exp. Corp.*, 765 F. Supp.2d 1222, 1230-1231 (C.D. Cal. 2011) [Granting summary judgment in favor of plaintiffs where the wage statement violated Lab. C. § 226(a)(6) by failing to list the pay period beginning date and violated § 226(a)(9) by listing inaccurate overtime rate and inaccurate number of overtime hours worked during the pay period]; *Willner v. Manpower Inc.*, 35 F. Supp.3d 1116, 1128-1132 [Granting summary judgment in favor of plaintiffs where the wage statement violated Lab. C. § 226(a)(6) by failing to list the pay period beginning date and violated § 226(a)(8) by failing to list the employer's address]. As in *McKenzie* and *Willner,* summary judgment is also proper here on the issue of liability under the § 226 claim.

II. PROCEDURAL HISTORY

Plaintiff Felicia Vidrio filed this action in the Superior Court of the State of California, County of Los Angeles (Case No. BC 590492) on August 6, 2015. Plaintiff Paul Bradley filed his action in the Superior Court of the State of California, County of Los Angeles (Case No. BC 590491) on August 6, 2015. Defendant answered the complaints and then removed the actions to the Federal District Court, Central District of California, on October 9, 2015. Thereafter, pursuant to stipulation of the parties and order of this Court, the *Vidrio* and *Bradley* actions were consolidated and merged together for all purposes, and an Amended Consolidated Complaint was filed on March 22, 2016, with the case number of the *Vidrio* action. (Doc. 24).

The Court certified the case as a class action on August 23, 2016. Notice was then mailed to the Class Members and the forty-five (45) day opt-out period has expired. Plaintiffs now move for summary judgment on the issue of liability on the First and Second Causes of Action in the Amended Consolidated Complaint. Defendant has also filed a motion for summary judgment, which is scheduled to be heard on February 6, 2017.

III. THE UNDISPUTED MATERIAL FACTS

The Class Members/Aggrieved Employees are California residents employed by Defendant in California as flight attendants. They perform work in California and typically begin and/or end each shift in California. (Plaintiffs' Undisputed Material

Facts ("PUMF") Nos. 1, 2, 3). Thus, although the Class Members/Aggrieved Employees perform work outside of California, such work is temporary in nature because the work shifts typically begin and/or end in California. (PUMF 3).

Defendant pays the Class Members/Aggrieved Employees their wages in California and provides them with a wage statement at the time the wages are paid that Defendant calls a "Pay Advice" or "Statement of Earnings." (PUMF 4). The Class Members/Aggrieved Employees pay California income tax on their wages. (PUMF 2). The wage statements the Class Members/Aggrieved Employees receive from Defendant are in the format intended by Defendant; there is no mistake or clerical error. (PUMF 6).

Defendant has deep ties and a very significant connection to California as it (1) collectively employs more than 17,000 people alone at LAX and SFO, (2) services 17 California airports (more than any other state), (3) operates more than 400 flights daily out of LAX and SFO, (4) serves an average of 5.6 million passengers annually at LAX and 10.6 million passengers annually at SFO, and (5) is investing $573,000,000 in upgrades to its facilities at LAX. (PUMF Nos. 17, 18, 19, 20, 21).

Defendant pays the Class Members/Aggrieved Employees specific hourly rates depending upon the pay activity they are performing, which activities include: Domestic Flying; International Flying; Purser; Galley; Understaffing Pay; Night Pay; Holiday Pay; Holding Time; and Deadhead Pay. (PUMF 7). These hourly rates are not calculated or paid based upon the wage laws of the state the Class Members/Aggrieved Employees are flying over at the time the work is being performed, but are calculated and paid pursuant to the hourly rates set forth in the applicable collective bargaining agreement. (PUMF 8). In other words, the location of where the Class Members/Aggrieved Employees perform their work has no impact whatsoever on the wage information shown (or that should be shown) on their wage statements.

The wage statements Defendant provides to the Class Members/Aggrieved Employees when it pays them hourly wages do not list the applicable hourly rates corresponding to the pay activities or list the number of hours worked at each hourly rate. (PUMF 10).

Defendant's physical corporate address is 233 South Wacker Drive, Chicago, Illinois. (PUMF 9). All wage statements Defendant provides to the Class Members/Aggrieved Employees fail to list Defendant's physical corporate address. (PUMF 11).

The California Division of Labor Standards Enforcement ("DLSE") has posted for many years on its website an exemplar wage statement for hourly California employees that demonstrates compliance with the requirements of Labor Code § 226(a). (PUMF 14). The DLSE's exemplar wage statement shows compliance with § 226(a)(8) by listing the physical address of the employer, not a P.O. box, and shows compliance with § 226(a)(9) by listing all applicable hourly rates and the number of hours worked at each rate during the pay period. (PUMF 15).

The Class Members/Aggrieved Employees cannot promptly and easily determine from the wage statement alone: (1) Defendant's physical address; (2) their applicable hourly rates; or (3) the number of hours that correspond to each hourly rate. (PUMF 16).

IV. LEGAL STANDARDS

Rule 56 of the Federal Rules of Civil Procedure states in relevant part:

> A party may move for summary judgment, identifying each claim or defense - - or the part of each claim or defense - - on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

A "genuine" dispute of material fact only exists if there is sufficient evidence for a reasonable fact-finder to find for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). If the moving party satisfies its initial burden of production, then the non-moving party must produce admissible evidence to show that a genuine issue of material fact exists. See *Nissan Fire & Marine Ins. Co. v. Fritz Cos.,* 210 F.3d 1099, 1102-03 (9th Cir. 2000). "A mere scintilla of evidence will not be sufficient to defeat a properly supported motion for summary judgment; rather, the nonmoving party must introduce some significant probative evidence . . ." *Summers v. Teichert & Son, Inc.*, 127 F.3d 1150, 1152 (9th Cir. 1997). If the non-moving party fails to make this showing, the moving party is entitled to summary judgment. *Celotex Corp. v. Catrett,* 477 U.S. 317, 323 (1986).

V. THE STATE AND THE AGGRIEVED EMPLOYEES ARE ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW ON THE FIRST CAUSE OF ACTION UNDER PAGA

A. The PAGA Wage Statement Claim Has Only One Simple Element

A PAGA claim for civil penalties based upon violations of the wage statement requirements of Labor Code § 226(a) is a simple claim with only one element: proof that the wage statement is missing or incorrectly states any of the information required by § 226(a). Because a PAGA wage statement claim seeks the ***civil penalties*** provided by PAGA under Labor Code § 2699(f), and not the ***statutory penalties*** in Labor Code § 226(e), a PAGA wage statement claim only requires proof of a violation of subdivision (a) of § 226. *McKenzie v. Federal Exp. Corp.*, 765 F. Supp.2d 1222, 1232-1233 (C.D. Cal. 2011); *Willner v. Manpower Inc.*, 35 F. Supp.3d 1116, 1135-1136 (N.D. Cal. 2014).

The same violation of a Labor Code provision may give rise to both civil penalties under PAGA and statutory penalties found in the underlying Labor Code provision. *Caliber Bodyworks Inc. v. Sup. Court,* (2005) 134 Cal. App.4th 365, 377-378. The same violation of the wage statement requirements of Labor Code § 226(a) gives rise to two distinct types of penalties: (1) civil penalties recoverable by the State and Aggrieved Employees under § 2699(f) of PAGA; and (2) statutory penalties recoverable by the employees under subdivision (e) of § 226. The PAGA civil penalties are "designed to protect the public and penalize the employer for past illegal conduct." *Brown v. Ralphs Grocery Co.,* (2011) 197 Cal. App. 4th 489, 499; see also *Arias v.*

Superior Court, (2009) 46 Cal. 4th 969, 986. By contrast, the statutory penalties in subdivision (e) of § 226 are paid entirely to the employees as compensation for injuries suffered as a result of the violation(s) of § 226(a). In a wage statement case, both types of penalties are recoverable upon proof of one or more violations of the wage statement requirements of § 226(a). *Caliber* at pp. 377-378.

A plain reading of the PAGA statute illustrates the single element of proof required for the PAGA wage statement claim (e.g. the violation of § 226(a)). Labor Code § 2699.5 provides for the recovery of PAGA civil penalties for "any alleged violation of . . . **subdivision (a) of Section 226** . . ." Section 2699.5 specifically excludes all other subdivisions of § 226, including subdivision (e) and its elements concerning proof of "injury" and "intent." Thus, there is no injury or intent elements that apply to the recovery of PAGA civil penalties based upon violations of the wage statement requirements of § 226(a). Indeed, the Courts that have analyzed this issue have held that wage statement claims under PAGA only require proof of the violation under § 226(a), and do not require proof of the elements of § 226(e). *Lopez v. G.A.T. Airline Ground Support, Inc.*, 2010 WL 2839417 at *6 (S.D. Cal. 2010); *McKenzie* at pp. 1232-1233; *Willner* at pp. 1135-1136.

In *McKenzie v. Federal Exp. Corp., supra,* 765 F. Supp.2d 1222, as in this case, plaintiff prosecuted a PAGA wage statement claim under § 226(a), and maintained that she only needed to prove a violation of § 226(a) to recover civil penalties under § 2699(f) of PAGA. The Court agreed holding:

> Consistent with the holding in [*Lopez v. G.A.T. Airline Ground Support, Inc.*, 2010 WL 2839417 (S.D. Cal. 2010)], ***this Court also finds that proving a violation of subsection (a) of Section 226 is sufficient by itself to warrant civil penalties under PAGA.*** Section 2699.3 plainly provides that a civil action to recover penalties under Section 2699(f) requires a violation of one of the provisions listed under Section 2699.5. CAL.LAB. CODE § 2699.3(a). When looking at the provisions listed under Section 2699.5, the statute specifically lists "subsection (a) of Section 226," but not Section 226(e). That language persuades the Court that, for the purposes of recovering PAGA penalties, one need only prove a violation of Section 226(a), and need not establish a Section 226(e) injury.

Id. at p. 1232, emph. added; see also *Willner v. Manpower, supra,* 35 F. Supp.3d at p. 1136 [same].

In sum, a PAGA wage statement claim, unlike an individual or class action wage statement claim, only requires proof of one element: a violation of § 226(a).

B. The State And Aggrieved Employees Are Entitled To Summary Judgment On The § 226(a)(8) PAGA Claim

The term "address" in § 226(a)(8) means physical address of the employer, not a P.O. Box. This interpretation is consistent with the rules of statutory interpretation, the definition of "address" in related Labor Code provisions, the interpretation of § 226(a)(8) by the DLSE, and the legislative history. Therefore, the State and Aggrieved Employees are entitled to judgment as a matter of law because it is undisputed that Defendant's wage statements fail to list its physical address. (See PUMF Nos. 9, 11).

1. The Rules of Statutory Interpretation Show That The Term "Address" In § 226(a)(8) Means Physical Address

Where the case turns on the meaning of a sentence in a statute, the court "must consider [the sentence] in the context of the entire statute . . . and the statutory scheme of which it is a part." *DuBois v. Worker's Comp. Appeals Bd.,* (1993) 5 Cal.4th 382, 388. In *DuBois,* the Court applied this rule in determining whether Labor Code § 5814 penalties could be assessed against a government agency (i.e. the UEF) for its failure to timely pay worker's compensation benefits to an injured worker. In making this determination, the Court reviewed related sections of the Labor Code concerning the purpose of the UEF (i.e. Lab. C. §§ 3715, 3716, and 3716.2), and held that assessing penalties under § 5814 against the UEF would be inconsistent with its statutory purpose, and that such penalties could only be assessed against the employer and/or its worker's compensation insurance carrier. *Id.* at pp. 387-390.

In the present case, the Court must consider the definition of the term "employer address" in Labor Code § 2810.5 when determining the meaning of this term in § 226(a)(8). This is because both Labor Code provisions are part of the same statutory scheme, to wit, both statutes mandate what information the employer must provide to the employee. Both provisions mandate written notice to employees of their rates of pay, the name of the employer, ***and the address of the employer,*** among other things. See Lab. C. § 226, subd.(s) (a)(8) and (a)(9), Lab. C. § 2810.5, subd.(s) (a)(1)(A), (a)(1)(D), and (a)(1)(E). Importantly, § 2810.5 specifically references § 226, and states that § 2810.5(a)(1)(E)'s requirement to give written notice of the employer's ***physical address*** can be satisfied by listing the physical address on the wage statement issued pursuant to § 226. On this point, § 2810.5 states:

> (a)(1) At the time of hiring, an employer shall provide to each employee a written notice . . . containing the following information:
>
> . . .
>
> (E) ***The physical address of the employer's main office or principal place of business,*** and a mailing address, if different.
>
> . . .
>
> (b) An employer shall notify his or her employees in writing of any changes to the information set forth in the notice within seven calendar days after the time of the changes, unless one of the following applies:
>
> (1) ***All changes are reflected on a timely wage statement furnished in accordance with Section 226.***

Emph. added.

Thus, as here, where the meaning of the sentence "address of the legal entity that is the employer" in § 226(a)(8) is at issue, the court must look at the meaning of the same term in § 2810.5. Section 2810.5(a)(1)(E) clearly mandates that the employee be given notice of the ***physical address*** of the employer, not a P.O. Box. Therefore, when § 226(a)(8) is read in the context of the entire statutory scheme of which it is a part, and in particular, when read in conjunction with § 2810.5, which specifically references § 226, it is clear that the sentence "address of the legal entity that is the employer" in § 226(a)(8) means the physical address of the employer, not a P.O. Box. Different sections within the same statutory scheme must be read in harmony with each other and the statutory framework as a whole. *Young v. McCoy,* 147 Cal. App.4th 1078, 1083

(2007). Here, where § 2810.5 serves the same purpose as § 226 (e.g. requiring employers to give notice to their employees of the employer's address) and mandates notice of the employer's physical address, the two statutes cannot be harmonized if § 226 is read to allow only notice of the employer's P.O. Box. This is especially true here, where § 2810.5 expressly incorporates § 226, and allows compliance with § 2810.5(a)(1)(E)'s employer address requirement by listing the physical address of the employer on a wage statement furnished pursuant to § 226.

Finally, reading § 226(a)(8) as requiring notice of the employer's physical address (as required by its companion statute § 2810.5) also complies with a common sense reading of the statute. Neither an employee nor a government regulatory agency such as the DLSE can audit payroll records at a P.O. Box, serve civil or administrative complaints on a P.O. Box, serve civil or administrative subpoenas on a P.O. Box, or enforce judgments against a P.O. Box.

2. The DLSE Interprets § 226(a)(8) As Requiring The Physical Address Of The Employer

The administrative construction of a statute by the government agency tasked with enforcing it "is entitled to great weight, and courts generally will not depart from such construction unless it is clearly erroneous or unauthorized." *Coca-Cola Co. v. State Bd. of Equalization,* (1945) 25 Cal.2d 918, 921; see also *Select Base Materials, Inc. v. Bd. of Equalization,* (1959) 51 Cal.2d 640, 647. The DLSE is the California administrative agency tasked with interpreting and enforcing the Labor Code.

"Although not binding on a court, the DLSE's construction of a statute, whether embodied in a formal rule or a less formal representation, is entitled to consideration and respect." *Morgan, supra,* at p. 1147; see also *Murphy v. Kenneth Cole Productions,* (2007) 40 Cal.4th 1094, 1105, fn. 7. In *Morgan,* a Labor Code § 226 wage statement case, the Court interpreted the requirements of § 226(a) by relying on the DLSE's interpretation of § 226(a)'s requirements as illustrated by an exemplar wage statement the DLSE posts on its website. *Morgan, supra,* at p. 1147. Indeed, the Court in

Morgan relies on the DLSE's exemplar wage statement in interpreting § 226(a) and specifically lists the link to the DLSE's website where the exemplar wage statement is displayed. *Id.*

The DLSE's exemplar wage statement, as posted on its website for many years, is attached to the Declaration of Kirk D. Hanson as Exhibits B, C, and D. Importantly, the DLSE's interpretation of § 226(a)(8)'s employer address requirement is reflected on its wage statement exemplar by listing the ***physical address*** of the employer, not a P.O. Box. The portion of the DLSE exemplar wage statement pertinent to this case illustrates compliance with § 226(a)(8) by showing:

"SMITH AND COMPANY, INC.

123 West Street Smalltown, CA 98765"

(Exhibits B, C, and D to Hanson Declaration). Thus, the DLSE's interpretation of § 226(a)(8) is consistent with Plaintiff's interpretation and clearly shows compliance with § 226(a)(8) by listing the employer's physical address, not a P.O. Box. Accordingly, the Aggrieved Employees and the State are entitled to summary judgment on the § 226(a)(8) PAGA claim.

3. The Legislative History Supports Plaintiffs' And The DLSE's Interpretation Of § 226(a)(8)

The use of a P.O. Box runs afoul of the legislative purpose of Section 226(a)(8)'s address requirement, which is to ensure that employees can ***locate*** their employers. The legislative history on this requirement states:

> "In addition, this bill would add the requirement that the employer's address be included on the semimonthly information sheet given the employee, or on the employee's paychecks. ***The purpose of this is to protect employee's that do not receive W-2 statements of earnings from an employer and hence are unable to claim refunds due from the Federal and State Governments. With the employer's address on record, the employee can locate the employer to correct the mistake."***

(See Hanson Declaration, ¶ 7, Exhibit E thereto).

In light of the legislative intent underlying Labor Code § 226(a)(8), it would be wholly inconsistent to claim that an employee is able to locate his/her employer by approaching a P.O. Box. Additionally, an employee who needs to sue his or her employer in a civil action for Labor Code violations must personally serve the employer. Personal service cannot be made on a P.O. Box.

As explained above, § 226(a)(8) requires the employer to list its physical address on the wage statement so that the employee can locate the employer if necessary. It is undisputed that Defendant failed to list its physical address on the wage statements it issues to its California flight attendants. (PUMF 9, 11). Accordingly, the State and Aggrieved Employees are entitled to summary judgment on this PAGA claim.

C. The State And Aggrieved Employees Are Entitled To Summary Judgment On The § 226(a)(9) PAGA Claim

Labor Code § 226(a)(9) states in pertinent part:

> Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees . . . an accurate itemized statement in writing showing . . . (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee . . .

It is undisputed that when Defendant's flight attendants are paid hourly wages, the wage statement they receive in conjunction with their paycheck does not show all applicable hourly rates or the number of hours worked at each hourly rate. In fact, the wage statements completely omit this required information. (PUMF 4, 5, 7, 10, 12, 13). Accordingly, the State and Aggrieved Employees are entitled to summary judgment on the § 226(a)(9) PAGA claim.

VI. THE CLASS IS ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW ON THE SECOND CAUSE OF ACTION CLASS CLAIM

The Second Cause of Action in the Amended Consolidated Complaint alleges class claims for violations of the wage statement requirements of subdivisions (a)(8) and (a)(9) of Labor Code § 226. The elements of a § 226 claim were summarized in

Willner v. Manpower, Inc., 35 F. Supp. 3d 1116, 1128 (N.D. Cal. 2014) as follows: "[A] claim for damages under Section 226(e) requires a showing of three elements: (1) a violation of Section 226(a); (2) that is 'knowing and intentional'; and (3) a resulting injury."

As demonstrated below, the Class proves each element of the § 226 claim.

A. The Class Proves The Violations

The Class proves the violations of § 226(a)(8) and (a)(9) with the common proof of the wage statements themselves, -- all of which are in the same format that fail to list Defendant's address, the flight attendants' applicable hourly rates, and the corresponding number of hours worked at each hourly rate. (See PUMF Nos. 4, 5, 7, 9, 10, 11). As pointed out in *Torres v. Air to Ground Services, Inc.*, 300 F.R.D. 386 (C.D. Cal. 2014), the § 226 wage statement claim is ideally suited for class-wide adjudication because "the facts necessary to prove this inaccuracy can be satisfied with common proof, namely Defendants' uniform payroll procedures and records of the wage statements themselves." Id. at p. 403. Thus, the Class proves the violations of § 226(a).

B. The Class Proves The Intent Element

The Class is not required to prove that Defendant knew its wage statements violated the requirements of § 226(a) or that Defendant has an evil motive or intent, but only that Defendant was/is aware of the format of the wage statements it provides to its employees. *Willner, supra,* 35 F. Supp.3d at 1131. And, ignorance of the law is not a defense. *Hale v. Morgan,* (1978) 22 Cal.3d 388, 396. "Even in penal statutes, willfulness generally requires 'only that the illegal act or omission occurs 'intentionally,' without regard to motive or ignorance of the act's prohibited character."' *Heritage Residential Care, Inc. v. DLSE,* (2011) 192 Cal. App.4th 75, 84 [discussing intent elements under various Labor Code provisions].

Here, it is undisputed that Defendant is aware of and intends the format of the wage statements it provides to the Class Members. Plaintiffs first provided Defendant with notice of the defects in the wage statements by way of their pre-filing PAGA claim notice letter, and then again by way of their Complaints and their Amended Consolidated Complaint. (PUMF 6). Despite such notice, and despite this pending litigation, Defendant has not changed the format of the subject wage statements. (PUMF Nos. 4, 5, 6). As such, Defendant intends the format of the subject wage statements; there is no mistake or clerical error. Whether Defendant knows this format violates the law is irrelevant. *Willner* at 1131. Indeed, on this exact point the court in *Brewer v. General Nutrition Corp.,* 2015 WL 5072039 (N.D. Cal. 2015) states: "so long as the evidence shows the employer provided wage statements without all the required information and knew that the statements lacked this information, it does not matter whether the employer was ignorant of the statute making inaccurate statements unlawful [citations]." *Id.* at *11.

In any event, Defendant cannot claim ignorance of the requirements of § 226(a) because for many years the State of California has posted a picture of an exemplar wage statement on the DLSE's website that demonstrates how to comply with the wage statement requirements of § 226(a). *Willner* at pp. 1131-1132. In *Willner,* defendant failed to put its address and the pay period start date on the wage statements. The court noted that any mistake as to what the law required could easily have been remedied by looking at the exemplar wage statement posted on the DLSE's website. *Id.* The court therefore determined that the evidence supported a knowing and intentional violation, as the defendant knew or should have known that the conduct was unlawful. *Id.*

The DLSE's exemplar wage statement clearly shows compliance with the requirements of Subdivisions (a)(8) and (a)(9) of § 226 by listing the employer's ***physical address,*** all applicable hourly rates, and the number of hours worked at each rate. (PUMF Nos. 14, 15, and Exhibits B, C, and D to Hanson Decl.). For these reasons, the Class proves the intent element under § 226(e).

C. The Class Proves The Injury Element

The class proves the injury element with the common proof of the wage statements themselves because, pursuant to the 2013 amendment to the injury requirement, § 226(e) now defines injury as an objective, "reasonable person" standard. Injury is now deemed proved if a reasonable person could not promptly and easily determine the employer's address and the hourly rates and hours worked at those rates by looking at the wage statement alone. Lab. C. § 226(e)(2)(B), and (e)(2)(C). As amended, subdivision (e)(2) of § 226 now states in pertinent part:

> An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine ***from the wage statement alone*** [the employer's address and hours and rates of pay].

Lab. C. § 226(e)(2)(B), emph. added.

> For purposes of this paragraph, "promptly and easily determine" means a reasonable person would be able to readily ascertain the information ***without reference to other documents or information***.

Lab. C. § 226(e)(2)(C), emph. added.

The Class proves injury under this objective, reasonable person standard with the common proof of the wage statements themselves. Contrary to the requirements of § 226(a)(8) and (a)(9), and contrary to the DLSE's exemplar wage statement, Defendant's wage statements do not list Defendant's address and do not list the flight attendants' applicable hourly rates or the number of hours worked at each rate. (PUMF Nos. 4, 5, 7, 9, 10, 11, 16). Accordingly, the Class proves injury.

D. The Class Is Entitled To Injunctive Relief

This Court also certified an injunctive relief class under Rule 23(b)(2). Moreover, Labor Code § 226(h) provides for injunctive relief as follows: "An employee may also bring an action for injunctive relief to ensure compliance with [section 226(a)], and is entitled to an award of costs and reasonable attorney's fees."

The Rule 23(b)(2) class requests an order from this Court requiring Defendant to comply with subdivisions (a)(8) and (a)(9) of § 226 by listing its physical address on the wage statements and by listing the applicable hourly rates and number of hours worked at each rate on the wage statements. Requiring Defendant to comply with these requirements will not cause undue hardship to Defendant because Defendant "will suffer no hardships other than those associated with bringing their record-keeping procedures and paycheck information into compliance with state and federal requirements – costs that defendants should already be incurring." *Carrillo v. Schneider Logistics, Inc.*, 823 F. Supp.2d 1040, 1046 (2011) [no hardship to employer by requiring compliance with Labor Code § 226(a)'s wage statement requirements].

VII. CONCLUSION

For the reasons stated herein and as established by the documents filed in support of this Motion, Plaintiffs respectfully request that this Court grant Plaintiffs' Motion for Summary Judgment in its entirety.

Dated: January 19, 2017

Respectfully submitted,

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